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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

RORY CROOKSHANKS,

Plaintiff and Respondent,

v.

LEAH CROOKSHANKS, as Trustee, etc.,

Defendant and Appellant.

B231580

(Los Angeles County
Super. Ct. No. BP114283)

APPEAL from an order of the Superior Court of Los Angeles County, Reva Goetz, Judge. Affirmed.

Law Offices of Murray Kamionski and Murray Kamionski for Defendant and Appellant.

Michael Smith for Plaintiff and Respondent.

INTRODUCTION

Leah Bonnickson Crookshanks, former trustee of the Rex J. Crookshanks Trust (the Trust), appeals from the orders of the probate court surcharging her \$730,627 and denying her request for trustee fees upon a finding that she breached her fiduciary duties, mismanaged the Trust estate, engaged in self-dealing, and used Trust assets for her personal benefit. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. the Trust

Rex¹ established the Trust on February 28, 2007, and transferred into it all of his liquid assets and 15 parcels of real property. Rex's balance sheet as of December 31, 2006 indicated total assets of \$17,545,000, of which \$190,000 was liquid, and total liabilities of \$4,949,500. Thus, his net assets were \$12,595,500. Rex amended the Trust with the First Amendment to the Trust on March 23, 2007, to name Leah as his successor trustee, among other things. Leah, a real estate broker with St. Tropez Realty, married Rex a week or so before he passed away on April 16, 2007. Respondent Rory Crookshanks is decedent's son and a beneficiary under the Trust.

The First Amendment to the Trust also directed, among other things, upon Rex's death and after payment of taxes and other obligations, that the trustee sell the remainder of the Trust estate, including all real property, and distribute the proceeds to the trustee of The Rex J. Crookshanks Charitable Remainder Unitrust (CRUT), who was thereafter to distribute to Rory and Leah as beneficiaries, 2.5 percent each of the net fair market value of the Trust assets every taxable year.

2. Petition to remove trustee

In December 2008, Rory filed a petition for removal of Leah as trustee, for appointment of a successor trustee, and for transfer orders and payment of attorney fees. He alleged that Leah refused to comply with the provisions of the First Amendment to

¹ For clarity, we refer to the parties by their first names. We mean no disrespect thereby.

the Trust to sell the real property and make the distributions to the CRUT or to Rory. As she had been unwilling or unable to sell the real property in the 22 months since Rex's death, the properties' values decreased. Rory further alleged that Leah sold two Trust parcels in Hawaii but did not transfer the proceeds to the CRUT, in violation of the terms of the First Amendment to the Trust.

From that point on, the parties disagreed about payments Leah made from Trust funds, the transfer of Trust assets, the sale of the Trust's real property, and attorney fees, among other things. Either as the result of stipulation or upon its own findings after hearings, the probate court entered a variety of orders limiting the checks Leah could write as trustee, directing escrow for certain properties, and ordering Leah to distribute money to Rory.

In November 2009, the probate court ordered, pursuant to stipulation of the parties, that Rex's charitable intent was invalidated by the First Amendment to the Trust but that as amended, the Trust required the distribution of the decedent's properties directly to Leah and Rory. Therefore, the court ordered the Trust to distribute to Rory the cash sum of \$350,000 and four specified parcels of real property, without escrow, but subject to all liens, mortgages, and encumbrances. The court ordered the Trust to distribute to Leah \$50,000 and 11 specified parcels of real property, including the property on Via del Monte and Paseo del Sol, both in Palos Verdes Estates. The court also ordered the parties to pay \$25,000 from the Trust's Union Bank accounts each to Leah, Rory, and the attorneys. Any undistributed Trust balance was to be used for the payment of transfer fees, taxes, and closing expenses, and the like.

Leah did not comply with this court order. The probate court issued an order in December 2009 directing Leah to "immediately accept" the cash offer for the Via del Monte property and "execute all documents necessary so that the sale will be completed within thirty days" and pay Rory the \$350,000 cash the court had directed her to pay in November 2009. Leah appeared in court and stated she would not sign the escrow documents for the cash sale of the Via del Monte property, and so the court directed the clerk to execute the escrow instructions and grant deed.

Nonetheless, the sale was never completed. Instead, Leah planned to borrow \$1.75 million from private real estate investors to complete construction on the property, pay off the liens, and pay Rory his \$350,000, while allowing the property to appreciate in value.

On April 1, 2010 the probate court suspended Leah as trustee immediately, and ordered her to turn over all assets, books, and records to Rory as acting successor trustee, pending an evidentiary hearing.

3. Rory's petition to surcharge the former trustee and Leah's petition for trustee fees

Once he received the Trust records from Leah, Rory reviewed them and, as acting successor trustee, moved for orders surcharging Leah for breach of trust, self-dealing, misappropriation of Trust property, and loss of assets during her tenure as trustee. Rory alleged that Leah used her authority as trustee to borrow substantial amounts of money secured by the Trust real estate to pay for expenses incurred by her real estate business, which is unaffiliated with the Trust, to pay off her personal credit card bills, to pay her personal living expenses, and to purchase clothing and a Mercedes Benz car for her personal use. Additionally, Rory asserted, Leah engaged in self-dealing by using her own realty company, St. Tropez Realty, to manage, sell, and lease Trust property, for which she personally received leasing and management fees and brokerage commissions or referral fees, without disclosure to Rory as beneficiary. Furthermore, he alleged, Leah wrote checks on the Trust checking account between February 18 and 25, 2009 in direct violation of the probate court's February 18, 2009 order that she no longer write checks on the Trust account. Finally, Rory sought to recover from Leah money owed to the Trust as rent for her personal use of the Trust property on Paseo del Sol, which residence she refused to sell.

Leah filed a petition for trustee fees, extraordinary fees, costs, and attorney fees for the work she had done as trustee on behalf of the Trust.

After a lengthy hearing at which evidence was taken, the probate court issued its order in December 2010. The ruling is not in the record. However, Rory included it as

an attachment to his respondent's brief. The parties filed objections to the ruling and after consideration of the objections, the court issued its final order in January 2011. Therein, the court denied Leah's petition for trustee fees, extraordinary fees, costs, and attorney fees, and granted Rory's petition for orders surcharging Leah for breach of Trust in the sum of \$730,627. Leah's timely appeal followed.

CONTENTIONS

Leah makes seven specific assignments of error challenging the probate court's ruling finding she breached the Trust, surcharging her, and denying her trustee fees.

DISCUSSION

I. *The surcharge order*

1. *Standard of review*

The parties both assume, without explanation, that the applicable standard of review in this appeal is abuse of discretion. Insofar as Leah has appealed from the probate court's ruling surcharging her based on its repeated findings that Leah breached her fiduciary duties and benefitted herself at the expense of the Trust, we review the court's findings for substantial evidence. (See *Estate of Fain* (1999) 75 Cal.App.4th 973, 991-992.)

"Where [a] statement of decision sets forth the factual and legal basis for the decision, any conflict in the evidence or reasonable inferences to be drawn from the facts will be resolved in support of the determination of the trial court decision." (*In re Marriage of Hoffmeister* (1987) 191 Cal.App.3d 351, 358; Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2011) ¶ 8:62, pp. 8-28 to 8-29; Prob. Code, § 1000 [rules of practice applicable to civil actions apply to probate proceedings, unless otherwise provided by Probate Code].) The ultimate facts found in the statement of decision necessarily include findings on the intermediate evidentiary facts that sustain them. (*Muzquiz v. City of Emeryville* (2000) 79 Cal.App.4th 1106, 1125.)

2. *Leah has forfeited the issue of sufficiency of the evidence to support the surcharge order by her failure to fully and fairly discuss the evidence.*

“ ‘A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.’ [Citations.]” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Accordingly, we presume that the record contains evidence to support every finding of fact the probate court makes unless the appellant, Leah here, demonstrates otherwise. (*Schmidlin v. City of Palo Alto* (2007) 157 Cal.App.4th 728, 737 (*Schmidlin*).)

Parties challenging the sufficiency of the evidence to support a finding “must set forth, discuss, and analyze *all* the evidence on that point, both favorable and unfavorable” (*Doe v. Roman Catholic Archbishop of Cashel & Emly* (2009) 177 Cal.App.4th 209, 218, italics added (*Doe*)), and *not merely their own evidence*. (*Clark v. Superior Court* (2011) 196 Cal.App.4th 37, 52-53.) Furthermore, the party challenging the sufficiency of the evidence must present the facts in a light most favorable to the prevailing party. (*Schmidlin, supra*, 157 Cal.App.4th at pp. 737-738.)

The appellant must also provide a summary of the significant facts in the record and provide references to the record to support his or her claims concerning the evidence. (Cal. Rules of Court, rule 8.204(a)(1)(C) & (a)(2)(C).) It is not up to the court to search the record to determine whether the appellant’s assertions about the evidence are true. (*Schmidlin, supra*, 157 Cal.App.4th at p. 738.) When an appellant fails to fully analyze the evidence with specific citations to the record, or fails to present all the material evidence on an issue, only presenting facts and inferences favorable to her position, the contention that the findings are not supported by substantial evidence is deemed forfeited. (See *id.* at pp. 737-738; *Doe, supra*, 177 Cal.App.4th at p. 218; *Clark v. Superior Court, supra*, 196 Cal.App.4th at pp. 52-53.)

Here, Leah’s appellate briefs did not present a summary of all of the evidence adduced at trial below most favorably to the order. Leah did not set out, discuss, and

analyze the evidence relied on by the probate court. Rather, she discussed the evidence that supported her position or rebutted the facts asserted in Rory's brief. By discussing only evidence tending to support her position, and by omitting material portions of the record, Leah has forfeited her right to contend that there was no evidentiary basis for the court's ruling that she be surcharged. (*Clark v. Superior Court, supra*, 196 Cal.App.4th at pp. 52-53; see also *Pringle v. La Chapelle* (1999) 73 Cal.App.4th 1000, 1003-1004 & fn. 2.)

Leah counters that *Rory* forfeited his argument that the evidence *supports* the probate court's ruling because *he* did not set forth sufficient accurate citations to the record in his respondent's brief. Leah misperceives the burdens on appeal. An appellate court may proceed to decide an appeal when no respondent's brief is filed. (Cal. Rules of Court, rule 8.220(a)(2).) We start with the presumption that the probate court's ruling is correct and that the evidence supports every factual finding. (*Schmidlin, supra*, 157 Cal.App.4th at p. 737.) It is manifestly Leah's obligation as appellant, not Rory's as respondent, to demonstrate probate court error. (*Pringle v. La Chapelle, supra*, 73 Cal.App.4th at p. 1003; *Schmidlin, supra*, at p. 737.) Leah has forfeited her contentions on appeal.

Out of an abundance of caution, however, we address Leah's various contentions individually.

2. *Leah has not demonstrated that the order surcharging her as trustee was erroneous.*

a. *the mechanics lien and lawsuit*

Leah first contends that the trial court abused its discretion in finding that she breached her fiduciary duty to the Trust by settling the lawsuit involving the Via del Monte property brought by the concrete contractor. She cites two provisions of the Trust *and her own facts* to argue that she was empowered to act and she was obligated to continue the construction on the Via del Monte property as it was in the best interest of the Trust. But Leah omits to mention, although the Trust was named as a defendant in the lawsuit, that she negotiated a settlement of this lawsuit *in her name only*, thereby

exposing the Trust to further liability. Meanwhile, she paid the settlement with Trust assets. Leah also ignores the fact that she negotiated and entered into the settlement without obtaining the probate court's permission. These acts constitute a breach of Leah's duty as trustee "to take reasonable steps to defend actions that may result in a loss to the trust." (Prob. Code, § 16011.) It is of no significance that the Trust was not exposed to further liability where Leah settled the lawsuit for herself only and paid for that settlement out of Trust assets.

b. the transfer of Trust assets to herself

"The trustee has a duty not to use or deal with trust property for the trustee's own profit or for any other purpose unconnected with the trust, nor to take part in any transaction in which the trustee has an interest adverse to the beneficiary." (Prob. Code, § 16004, subd. (a).)

Leah challenges the probate court's order surcharging her \$248,692 for Trust assets she transferred from Trust bank accounts to herself. However, Leah's briefs discuss solely her own evidence. She states she "presented the following evidence at the court hearing to rebut this [finding]" and proceeds to quote from her own testimony only. The probate court heard all of the evidence and made its finding. As Leah failed to discuss and analyze all of the evidence in a light most favorable to the judgment, we infer supporting evidence exists and may not reweigh that evidence. (*Bunch v. Hoffinger Industries, Inc.* (2004) 123 Cal.App.4th 1278, 1303.)

c. rent

Leah contends that the trial court abused its discretion in surcharging her for rent for the period she was residing at the Paseo del Sol property owned by the Trust. Citing no authority, Leah argues "If she is charged anything at all for rent, it should be for a ten month period only, as opposed to 34 months" that she was actually charged. "When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived." (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785.) In any event, Leah does not appear to challenge the basis for the court's decision to charge her rent; she only challenges the length of time

she should have been paying that rent. Given she agrees she owes rent to the Trust for her personal use of the Paseo del Sol property, there is no conceivable reason she should not pay rent for the entire time she was using the Trust property for her own personal benefit. As trustee, Leah must refrain from dealing with Trust property for her own profit or for any other purpose unconnected with the Trust, nor to take part in any transaction in which she has an interest adverse to Rory as beneficiary. (Prob. Code, § 16004.)

Moreover, although Leah asserts that she used her best efforts to sell the Paseo del Sol property, the probate court had evidence that the Trust directed that *all* real property should be sold. While Leah placed the Paseo del Sol property on the market in 2008, she nonetheless chose to live there as well. Rory obtained a probate court order in May 2009 directing Leah to sell the property at prices designed for a “quick sale.” In August 2009, the probate court ordered Leah and Rory to counter two offers and accept the first offer of \$2,900,000 or greater. Instead, Leah canceled escrow and remained on the property.

d. commission and referral fees for real property transactions

Leah contends that the probate court erred in surcharging her \$30,011 in commission or referral fees she received on transactions involving Trust real property. The court surcharged Leah upon a finding that she “took money as either referral fees and/or commissions that would have resulted in either more cash to the trust and/or reduced commissions charged to the trust that would have increased the proceeds to the trust. This is in direct conflict with the fiduciary responsibilities that she had and owed to the trust as Trustee.”

Citing the Trust declaration Article V, Paragraph G entitling the trustee to “reasonable compensation for its services” and portions of *her own testimony*, Leah argues that the \$30,011 represents commission and referral fees that are rightfully hers. The compensation to which Leah refers in Article V, Paragraph G of the Trust concerns the trustee’s compensation for services rendered to the Trust, i.e., trustee fees. (See Prob. Code, §§ 15680 & 15681.) Paragraph G grants the trustee “reasonable compensation for . . . services,” not the payment of commissions to herself personally as the real estate broker for the sale of property that is part of the Trust estate.

More important, Leah fails to mention that while she was selling the property, the probate court expressly ordered that “Saint Tropez Realty and Leah Crookshanks *shall not be the listing broker* for trust properties and shall not individually receive any commission or other payments on account of the marketing of any trust properties.” (Italics added.) Although that order was made in May 2009, after Leah had already sold some of the Trust’s property, the order represents the court’s conclusion Leah’s payment to herself for the management and sale of Trust property was self-dealing. At the hearing giving rise to the order she appealed from, Leah admitted that she kept the broker commissions as her own property and not part of the Trust assets. The probate court asked Leah, “Just to make sure I understand what you’re saying. You were acting as trustee of the Trust selling Trust property and that you had a side agreement with Mr. Duston that if you referred him the business to represent the property, he would give you a referral fee and that referral fee was yours personally outside of the trust; is that correct? [¶] The Witness [Leah]: Yes.”

“It has always been against public policy for a trustee to occupy any position in which his actions affect his individual interests.” (*Estate of McLellan* (1936) 8 Cal.2d 49, 54.) “A trustee is not permitted to use or deal with trust property for his own profit, *or for any other purpose unconnected with the trust, in any manner.* [Citation.] ‘A violation of duty on the part of a trustee is treated as a fraud upon the beneficiary [citation][.]’” (*Estate of Arbuckle* (1950) 98 Cal.App.2d 562, 569.) Leah has not demonstrated error.

e. *the private investor loan*

Leah contends that the trial court erred by surcharging her \$89,000 as the cost to the Trust for obtaining the \$1.75 million hard-money, as opposed to a conventional, open-market, loan. Citing Article IV, Paragraph A(10) of the Trust declaration and her own testimony explaining that the Trust had no money and so it was unable to obtain a conventional loan, Leah argues that she was fulfilling her obligations to the Trust when she borrowed from a nonconventional lender to maintain the property.

The trustee has a duty to make the trust property productive under the circumstances and in furtherance of the purposes of the trust and to invest and manage trust assets as a prudent investor would. (Prob. Code, §§ 16007 & 16047.)

Here, the court found “But for [Leah] delaying the sale of the real estate assets AND draining the liquidity from the trust in the amount of \$177,649 . . . which created the necessity for the hard money loan[,] the trust would not have incurred the expenses associated with the hard money loan.” The court also found that Leah “has experience as a real estate agent. However, she delayed the liquidation of Trust assets, made decisions, and took actions that benefitted her personally while increasing both cash demands on the trust and expenses that the Trust could not afford.” Accordingly, the court surcharged her \$89,000 as the cost to the Trust for the private, high-interest loan.

Insufficient citations to the record prevent us from verifying the facts Leah asserts. (*Pringle v. La Chapelle, supra*, 73 Cal.App.4th at p. 1003.) We presume that the record contains evidence to support the court’s factual finding that Leah’s mismanagement of the Trust estate and depletion of its liquid assets forced the Trust to borrow a nonconventional, high-interest loan. (*Schmidlin, supra*, 157 Cal.App.4th at p. 737.)

f. expenditures that did not benefit the Trust

Leah challenges probate court’s ruling surcharging her \$57,775 for an elevator contract change and cabinetry that was never delivered for construction at the Trust’s Via del Monte property. The court referred to this money as “[f]unds paid for items that did not benefit the Trust.” Leah cites her own evidence only, and argues that the elevator was ordered by Rex, and it and the cabinets were purchased for the benefit of the Trust’s property. As a result, Leah argues, she should not be surcharged for that money. Where Leah failed to provide us with an adequate recitation of the facts and citation to the record, we presume that the record contains evidence to support the court’s factual finding. (*Schmidlin, supra*, 157 Cal.App.4th at p. 737.) We will not search the record to determine whether the appellant’s assertions about the evidence are true. (*Id.* at p. 738.)

g. summary

The probate court found that Leah settled the civil action against her and the Trust on her own behalf only, without protecting the interests of the Trust, delayed or interfered with the sale of real estate assets realizing a loss and increasing the expenses necessary to manage the properties before they were sold, depleted the Trust of liquid assets, created the necessity for a non-conventional, high-interest loan, made decisions and took actions that benefitted her personally while increasing both cash demands on the Trust and expenses that the Trust could ill afford, and used Trust assets to support herself. As explained, Leah has failed to present us with an adequate recitation of the facts and so we presume the record contains the facts to support these findings.

If a trustee commits a breach of trust, the probate court may compel the trustee to redress the breach by payment of money. (Prob. Code, §§ 16440 & 16420, subd. (a)(3).) “The reference to payment of money in the statute is comprehensive, and includes liability that might be characterized as damages, restitution, or surcharge. [Citations.]” (Cal. Civ. Prac. Guide (Cont.Ed.Bar 2005) Probate & Trust Proceedings, § 24:96, p. 24-103.) For a breach of fiduciary duty, or a breach of trust, the trustee is chargeable with the loss or depreciation in value of the trust estate resulting from the breach, with interest; any profit made by the trustee through the breach of trust, with interest; and any profit that would have accrued to the trust estate if the loss of profit is the result of the breach of trust. (Prob. Code, § 16440.)² The probate court’s findings of breach of trust, mismanagement, wasting of assets, self-dealing, and personally benefiting at the expense

² Probate Code section 16440 reads: “(a) If the trustee commits a breach of trust, the trustee is chargeable with any of the following that is appropriate under the circumstances: [¶] (1) Any loss or depreciation in value of the trust estate resulting from the breach of trust with interest. [¶] (2) Any profit made by the trustee through the breach of trust, with interest. [¶] (3) Any profit that would have accrued to the trust estate if the loss of profit is the result of the breach of trust. [¶] (b) If the trustee has acted reasonably and in good faith under the circumstances as known to the trustee, the court, in its discretion, may excuse the trustee in whole or in part from liability under subdivision (a) if it would be equitable to do so.”

of the Trust all support the surcharge order. Leah has not demonstrated probate court error with respect to the surcharge order.

II. *The trustee and attorney fee order*

We apply the abuse of discretion test to a compensation order. (*Terry v. Conlan* (2005) 131 Cal.App.4th 1445, 1461 [payment of attorney fees from the trust]; *Finkbeiner v. Gavid* (2006) 136 Cal.App.4th 1417, 1422 [trustee fees].)

“An attorney who prosecutes an appeal from an order addressed to the trial court’s sound discretion is confronted with more than a daunting task. . . . [¶] . . . ‘ “The term [judicial discretion] implies the absence of arbitrary determination, capricious disposition or whimsical thinking. It imports the exercise of discriminating judgment within the bounds of reason. [Par.] To exercise the power of judicial discretion all the material facts in evidence must be known and considered, together also with the legal principles essential to an informed, intelligent and just decision.” [Fn. omitted.]’ [Citations.]” (*Estate of Gilkison* (1998) 65 Cal.App.4th 1443, 1448-1449.)

Leah requested trustee fees in the amount of 1 percent of the gross value of the Trust and \$24,000 in extraordinary fees. The court found that despite Leah’s experience as a real estate agent, she delayed the liquidation of Trust assets, made decisions and took actions that benefitted her personally while increasing financial demands on the Trust and increasing expenses that the Trust could not afford. Accordingly, the court denied Leah’s request for extraordinary fees.

The probate court also denied Leah’s request for trustee fees in its entirety. The court cited Leah’s own filing showing that, while trustee, she sold the first piece of Trust property approximately 15 months after Rex died, and the last property approximately 30 months after his death. As a result, the court found, Leah realized a net loss to the Trust of approximately \$500,000. Recognizing that the real estate market values declined during this period, the court found, had the properties been sold upon Rex’s death in 2007 as directed by the Trust, the costs to the estate in the expenses for maintenance would have been less and the Trust would likely have realized greater sales values than it did in 2008, 2009 and 2010, when the properties were sold. The court did not surcharge Leah

for the net losses realized from the sales of the real properties because of the downturn in the market in 2007-2010. The court found that the Trust did not benefit from Leah's services as trustee because she breached her duty to the Trust by settling the lawsuit individually and leaving the Trust exposed, by using the liquid trust assets to support herself during Trust administration, by making poor decisions about the construction at Via del Monte, and causing multiple delays by her interference in the sale of the Paseo del Sol property.

Trustee compensation "may be reduced or denied where the trustee acts negligently or in breach of the trust." (*Estate of Gump* (1991) 1 Cal.App.4th 582, 597; Prob. Code, §§ 16420 & 16440.) "[I]n view of the finding of negligence in the management of [Trust] asset[s] . . . the trial court 'could in the exercise of its discretion properly deny compensation for services rendered in conjunction with the mismanaged trust asset. [Citation.]' [Citation.]" (*Estate of Gump, supra*, at p. 597.)

Leah contends that the probate court abused its discretion in denying her entire request for fees. She cites *Estate of Cassity* (1980) 106 Cal.App.3d 569 that "[t]he fact that some surcharges were assessed against the trustee is not, in itself, grounds for completely denying him compensation and expenses. Section 243 of Restatement Second of Trusts provides: 'If the trustee commits a breach of trust, the court may in its discretion deny him all compensation or allow him a reduced compensation or allow him whole compensation.' " (*Id.* at p. 574.) In *Cassity*, the trustee committed some malfeasance, but most of the charges were disproven. (*Ibid.*) That is not the case here.

Leah contends the denial of trustee fees was an abuse of discretion because she did not commit a breach of trust and is "not guilty of any malfeasance." As analyzed above, the probate court found that Leah did breach her fiduciary duties, self-dealt, profited at the expense of the Trust, depleted the Trust's liquid assets placing a financial burden on the real property assets. The court did not even charge Leah for the net losses resulting from the downturn in the real estate market. In view of the probate court's finding of repeated mismanagement and breach of trust since Rex's death, and given the court's

power to deny trustee compensation upon a finding of breach of trust, we cannot say the court abused its discretion here in denying Leah the fees she requested.

DISPOSITION

The order is affirmed. Respondent to recover costs of appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KLEIN, P. J.

We concur:

CROSKEY, J.

KITCHING, J.